

Minor Crimes, Massive Waste

The Terrible Toll of America's Broken Misdemeanor Courts

EXECUTIVE SUMMARY

The explosive growth of misdemeanor cases is placing a staggering burden on America's courts. Defenders across the country are forced to carry unethical caseloads that leave too little time for clients to be properly represented. As a result, constitutional obligations are left unmet and taxpayers' money is wasted.

NACDL's comprehensive examination of misdemeanor courts, including a review of existing studies and materials, site visits in seven states, an internet survey of defenders, two conferences, and a webinar, demonstrated that misdemeanor courts across the country are incapable of providing accused individuals with the due process guaranteed them by the Constitution. As a result, every year literally millions of accused misdemeanants, overwhelmingly those unable to hire private counsel, and disproportionately people of color, are denied their constitutional right to equal justice. And, taxpayers are footing the bill for these gross inefficiencies.

Legal representation for misdemeanants is absent in many cases. When an attorney is provided, crushing workloads often make it impossible for the defender to effectively represent her clients. Counsel is unable to spend adequate time on each of her cases, and often lacks necessary resources, such as access to investigators, experts, and online research tools. These deficiencies force even the most competent and dedicated attorneys to engage in breaches of professional duties. Too often, judges and prosecutors are complicit in these breaches, pushing defenders and defendants to take action with limited time and knowledge of their cases. This leads to guilty pleas by the innocent, inappropriate sentences, and wrongful incarceration, all at taxpayer expense.

This report explains, in depth, these and other problems observed in misdemeanor courts and offers recommendations for reform, while highlighting best practices from across the country. The recommendations include:

Divert misdemeanors that do not impact public safety to penalties that are less costly to taxpayers.

1 Defenders and judges across the country noted that misdemeanor dockets are clogged with crimes that they believe should not be punishable with expensive incarceration. Right now, taxpayers expend on average \$80 per inmate per day¹ to lock up misdemeanants accused of things like turnstile jumping, fish and game violations, minor in possession of alcohol, dog leash violations, driving with a suspended license, pedestrian solicitation, and feeding the homeless. These crimes do not impact public safety, but they do have a huge impact on state and local budgets across the country.

A number of jurisdictions have had success diverting some of these offenses to less costly penalties and reducing the caseloads of misdemeanor courts, thereby freeing up resources for other pressing needs. For example, in King County, Washington, a relicensing program allows individuals who have had their driver's license suspended pay the fines that led to the suspension through community service. The program is open to individuals regardless of whether they have a criminal charge pending, and, if completed, any pending charges of driving with a suspended license (DWLS) are dropped. An evaluation of the program found that it not only resulted in a dramatic decrease in the number of DWLS cases bogging down misdemeanor courts, but also generated net revenue.

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Reduce pressure on defendants to plead guilty, particularly at first appearance.

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The overwhelming caseloads in misdemeanor court put pressure on everyone in the court system — defenders, prosecutors and judges — to resolve cases quickly. Prosecutors use one time only plea offers to force early pleas. Judges utilize bail determinations and the threat of pretrial incarceration to encourage early pleas. Defenders, if they are even involved, note that a better deal might not come along and that they have no time to fully investigate the client's case. As a result, an extraordinary number of misdemeanor defendants plead guilty at their first appearance in court, whether or not they committed the crime. Not only is such coercion in stark violation of the Constitution, it also means taxpayers are footing the bill to imprison the innocent, as well as other defendants, whose situation might be better served by alternatives to incarceration.

- ◆ In New York City in 2000, almost 70 percent of misdemeanor cases were disposed of at the first appearance — most through a guilty plea.
- ◆ Site team members in Washington State observed two defenders advise as many as 132 defendants on an arraignment calendar in under four hours. Most stipulated to the police report, which resulted in a finding of guilt.

Enforce ethical obligations of all participants in misdemeanor adjudications.

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Misdemeanor courts are rife with violations of professional ethical standards. Defenders countenance caseloads that prohibit them from providing competent representation to their clients. Prosecutors talk directly with defendants and convince them to waive their constitutional rights. Judges encourage defendants to proceed without counsel and plead guilty quickly in order to move dockets. Ethical obligations for all professionals in misdemeanor court should be vigorously enforced to ensure that every defendant receives a fair and unbiased proceeding.

Provide counsel for any defendant facing the possibility of incarceration.

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Often in misdemeanor courts, defendants are not informed of their right to counsel under the Sixth Amendment, or are coerced into waiving counsel to avoid having to spend additional time in jail awaiting the appointment. Sometimes they are even required to pay an application fee in order to obtain the counsel that is guaranteed by the Constitution.

- ◆ Time and time again site team observers watched individuals plead guilty without counsel.

- ◆ Judges actually acknowledge the widespread violation of Sixth Amendment rights. For example, Chief Justice Jean Hoefer Toal of the Supreme Court of South Carolina told a group of attorneys at a state bar meeting, “*Alabama v. Shelton* is one of the more misguided decisions of the United States Supreme Court ... so I will tell you straight up we [are] not adhering to *Alabama v. Shelton* in every situation.”²
- ◆ Judges and prosecutors routinely speak directly to defendants and seek waivers of counsel in order to resolve the case more quickly. In Colorado, a state statute provides that a misdemeanor defendant must engage in plea negotiations with a prosecutor before the defendant can receive appointed defense counsel.³

It is indefensible that, despite longstanding constitutional precedent, a significant percentage of defendants in misdemeanor courts proceed without an attorney. The absence of counsel in these cases undermines the fairness and reliability of the criminal justice system and violates the Constitution, opening state and local governments up to costly lawsuits.

Provide public defenders with the resources necessary to effectively represent their clients.

Across the country, misdemeanor defenders report caseloads six and seven times greater than the national standards. In Chicago, Atlanta and Miami, defenders carry more than 2,000 misdemeanor cases per year.⁴ With these massive caseloads, defenders have to resolve approximately 10 cases a day — or one case every hour — not nearly enough time to mount a constitutionally adequate defense.

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Defender offices, contract defender offices, and assigned counsel lists must have sufficient attorneys to permit the maintenance of ethical caseload standards. Additionally, defenders should have access to resources necessary to provide effective assistance, including legal research services, investigators, experts, social workers, and mental health support services.

The consequences for the accused individuals involved, no less for the Constitution, demand that misdemeanor courts provide due process and equal justice for all those who appear in them. All across America, misdemeanor courts are failing to meet this critical standard. Implementation of the recommendations of this report will save taxpayers much needed resources while making these courts, and our justice system, reliable for all Americans.

Notes

1. Pew Center on the States, *One in 31: The Long Reach of American Corrections*, The Pew Charitable Trusts (March 2009), at 12.

2. Chief Justice Jean Hoefer Toal of the Supreme Court of South Carolina, South Carolina Bar Association, 22nd Annual Criminal Law Update (January 26, 2007).

3. COLO. REV. STAT. § 16-7-301(4) (2008).

4. Abdon M. Pallasch, *Call to Limit Cases Amuses Public Defenders*, CHICAGO SUN TIMES, (July 24, 2006); Erik Eckholm, *Citing Workload, More Public Defenders Are Refusing Cases*, N.Y. TIMES (Nov. 8, 2008) (noting Miami misdemeanor public defenders have approximately 2,400 cases). Regarding Miami, according to documents filed in court, the defender office in Dade County had 21 misdemeanor attorneys in 2006-2007. By the 2006-2007 fiscal year, those attorneys handled 46,888 new cases (2,232 per attorney). By the 2007 calendar year, they handled 50,115 cases (2,386 per attorney).